IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

C.M.A.No.351 of 2003
....

The Managing Director
Tamil Nadu State Transport
Corpn. (Salem Division II)
Ltd., (formerly known as
Annai Sathya Transport Corporation
Ltd.) Bharathipuram, Dharmapuri. .. Appellant(Respondent I)

vs.

1. Saraswathi
2. Sasikala
3. Babu
4. Sankar

5. Minor Deepa

(Declared as major and
discharge the guardian
from his guardianship
vide order dt. 20.8.03
made in CMP.No.11093/03)

6. M.Sivalingam

7. The Oriental Insurance Co.Ltd.,
Branch Office, Chitha Veerappa
Chetti Street, Dharmapuri. .. Respondents/ Petitioner 1 to 5 and
Respondent 2 & 3)

Appeal filed against the decree and judgment dated 21.6.2002 made in M.C.O.P.No.309 of 1994 on the file of Motor Accidents Claims Tribunal (Additional District Court cum Fast Track Court), Dharmapuri.

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For Appellant : Mr.P.Jagadeeswaran

For Respondents : Mr.V.R.Anna Gandhi for RR1 & 2

* * * * *

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

The appeal arises out of an order dated 21.6.2002 made in M.C.O.P.No.309 of 1994, whereby the Motor Accidents Claims Tribunal (Additional District cum Fast Track Court), Dharmapuri, has allowed the claim petition and awarded a compensation of Rs.13,60,000/- (Rupees Thirteen Lakhs Sixty Thousand only) with interest at 9% p.a., for the death of one Dhanapal, son of the first respondent, husband of the second respondent and father of respondents 3 to 6, in a motor accident said to have taken place on 5.5.1994 in Dharmapuri-Pennagaram main road near Chandra Balasubramaniam School.

2.1. The brief facts are: At about 7.00 p.m. on 5.5.94, when the deceased Dhanapal was returning after attending a funeral ceremony at Okenekal in his Yamaha motor bike along with one Sivalingam, in the main road at Pennagaram near Chandra Balasubramaniam School, a bus belonging to the appellant Corporation came behind the bike of the deceased in a rash and negligent manner and dashed against it, as a result of which, the said Dhanapal suffered grievous injury on the head and was admitted in the hospital and in spite of treatment, the deceased died on the same night.

2.2. The claim petition in M.C.O.P.No.309 of 1994 was filed by the respondents/claimants, claiming a compensation of Rs.15,00,000/- (Rupees Fifteen Lakhs only), for the death of the said Dhanapal, which was resisted by the appellant Corporation on the ground that the accident took place only when the deceased tried to overtake the appellant Corporation bus and it was not due to rash and negligent driving of the bus. The compensation claimed and the monthly income of the deceased were also disputed.

2.3. The Tribunal, after framing the issues and after taking into consideration the evidence, both oral and documentary, decided the claim petition in favour of the claimants in terms of the impugned judgment. The tribunal held that the accident in question had occurred only due to the rash and negligent driving of the bus by its driver and as a result of the same, the deceased died. The

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Tribunal also held that the claimants are entitled to the compensation for the death of the deceased Dhanapal and determined a sum of Rs.13,60,000/- as the amount due to the claimants under the following heads:

Loss of income	::	Rs.12,80,000/-
Loss of estate	::	Rs. 25,000/-
Loss of consortium	::	Rs. 20,000/-
Loss of love and affection	:	Rs. 25,000/-
Funeral expenses	::	Rs. 5,000/-
Medical expenses	::	Rs. 5,000/-
		Rs.13,60,000/-

3. The only contention argued before us by the learned counsel appearing for the appellant/Transport Corporation is with regard to the quantum of compensation arrived at by the Tribunal towards loss of income by fixing the monthly income at Rs.10,000/-. Learned counsel submits that the Tribunal erred in coming to the conclusion that the deceased was earning a sum of Rs.10,000/- per month by relying on Ex.P.11, the income certificate issued by P.W.3, the President of Dharmapuri Gold and Silver Merchants' Association, dated 18.11.2001 and on the basis of the evidence of P.W.1, the son of the deceased, which are not at all sufficient to come to the conclusion that the deceased was earning Rs.10,000/- p.m., as even as per the claim petition, the deceased was earning only Rs.7,500/- per month from and out of his jewellery shop and other house properties.

4. The learned counsel for the respondents/claimants submits that the compensation arrived at by the Tribunal towards loss of income of the deceased is not on the higher side in view of Ex.P.11, the income certificate as well as the evidence of P.W.1, the son of the deceased.

5. Heard and considered the rival contentions made by both sides.

6.1. Before the Tribunal, the claimants have filed various documents and out of them, Exs.P.5 to P.12 are relevant to the issue. Ex.P.5 is the certificate issued by the Central Excise Department granting recognition to the deceased Dhanapal as a Goldsmith. Ex.P.6 is the certificate issued by the Chartered Accountant with regard to the income-tax return filed by the deceased for the assessment years 1992-93 and 1993-94, and Exs.P.7 and P.8 are the income tax returns filed for the assessment years 1992-93 and 1993-94 and Exs.A.9 and A.10 are the challans for filing of the return in respect of assessment years 1992-93 and 1993-94. Ex.P.11 is the income certificate dated 18.11.2001 issued by

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Dharmapuri Gold and Silver Merchants' Association and Ex.P.12 is the insurance policy in respect of the yamaha bike, which was driven by the deceased at the time of accident.

6.2. Out of the above said documents, Ex.P.5 would go to show that the deceased was running a gold jewellery shop prior to his accident. Exs.P.6 to P.10 were filed to show that the deceased was filing income-tax returns by disclosing that he was earning Rs.24,970/- and Rs.29,535/- per annum, as per which he was paying tax to the tune of Rs.855/- and 370/- for the respective assessment years 1992-93 and 1993-94. Ex.P.12, the insurance policy in respect of the vehicle driven by the deceased, which, in our opinion, is not, in any way, helpful to the claimants. The only material document, which was relied upon by the Tribunal is Ex.P.11, the the income certificate dated 18.11.2001 issued by P.W.3, the President of Dharmapuri Gold and Silver Merchants' Association.

6.3. The Tribunal, as pointed out by the learned counsel for the appellant, simply relying upon Ex.P.11, the income certificate dated 18.11.2001 issued by P.W.3, the President of Dharmapuri Gold and Silver Merchants' Association as well as the evidence of P.W.1, the son of the deceased, had come to the conclusion that the deceased was earning Rs.10,000/- per month and accordingly, applying the multiplier of 16 and after deducting 1/3 towards personal expenses, awarded a compensation of Rs.12,80,000/- towards loss of income. But, in our considered opinion, it may not be proper for this Court to concur with the views expressed by the Tribunal with regard to the quantum arrived at towards loss of income, merely based on Ex.P.11 and the evidence of P.W.1, the son of the deceased, for the following reasons:-

(i) In the instant case, the accident had occurred on 5.5.94. But Ex.P.11, the income certificate is dated 18.11.2001, which would obviously go to show that the certificate had been obtained after a long delay of seven years. That apart, the certificate reveals that the victim was a member of the said Association for the past 15 years, which apparently would be prior to 18.11.2001. It is not clear from the above certificate issued by P.W.3, the President of Dharmapuri Gold and Silver Merchants' Association, as to whether the deceased was a member of the said Association for the past 15 years prior to the accident, which took place on 5.5.94 or prior to the date of issue of the certificate, viz., 18.11.2001. Further, it is also not clear as to whether P.W.3 was the President of the said Association during the time of accident. If that be so, in the absence of any such evidence to the effect that P.W.3 was the President of the said Association at the time of accident, it may not be proper for us to fix the quantum of income based on the income certificate dated 18.11.2001 issued by P.W.3.

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(ii) The solitary evidence of P.W.1, the son of the deceased Dhanapal, also cannot be relied upon to come to a conclusion that the deceased was earning a sum of Rs.10,000/- per month at the time of accident.

(iii) Once this Court comes to a conclusion that Ex.P.11, the income Certificate dated 18.11.2001 issued by P.W.3, the President of Dharmapuri Gold and Silver Merchants' Association and the evidence of P.W.1, cannot be relied upon for fixing the monthly income of the deceased, then the remaining documents that are available in respect of the income of the deceased are, (a) the certificate issued by the Chartered Accountant with regard to the income-tax returns filed by the deceased for the assessment years 1992-93 and 1993-94, which is marked as Ex.P.6 and (b) the respective income-tax returns filed before the income-tax department, viz., Exs.P.7 and P.8 and (c) the respective challans for the payment of income tax, viz., Exs.P.9 and P.10. When we peruse the said documents, Exs.P.6 to P.10, it could be seen that the deceased was earning an annual income of Rs.24,970/- and Rs.29,535/- for the assessment years 1992-93 and 1993-94, as per which, one can easily come to a conclusion that the deceased was only earning Rs.2,500/- per month approximately. Therefore, in the absence of any other documentary evidence with the regard to the monthly income of the deceased, we have no other option except to rely upon these documents, viz., Exs.P.6 to P.10 and accordingly, the monthly income of the deceased at the relevant period of time, could be fixed at Rs.2,500/- per month. Hence, applying the multiplier of 16, when we calculate the loss of income of the deceased, it would be Rs.2,500/- x 12 x 16 = Rs.4,80,000/- and deducting one-third towards personal expenses, it would be Rs.3,20,000/- and with this amount of Rs.3,20,000/-, when we add other conventional damages of Rs.80,000/-, the total compensation could be arrived at Rs.4,00,000/-.

7.1. But, considering the facts and circumstances of the case and also lapse of 12 years from the date of filing of the claim petition before the Tribunal, we took pain to see whether there is any other material as per which the monthly income of the deceased could be fixed a little more. Though there is no other documentary evidence with regard to the income of the deceased, when we peruse the claim petition filed by the claimants before the Tribunal, it could be seen that the deceased, who was owning a jewellery show room, was earning an income of Rs.5,000/- per month from the said show room and he was also getting an income of Rs.2,500/- from his house properties and other shops and thus, totally the deceased was earning Rs.7,500/- per month at the time of accident as stated in the claim petition.

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7.2. Thus, in view of the above said position, we feel it appropriate that the monthly income of the deceased could be fixed at Rs.5,000/-. Accordingly, we arrive at a sum of Rs.5,000/- with regard to the monthly income of the deceased and applying the multiplier of 16, the loss of income could be arrived at Rs.9,60,000/- (Rs.5,000/- x 12 x 16 = Rs.9,60,000/-) and deducting one-third towards personal expenses, it figures out to Rs.6,40,000/-. When we add the award of Rs.80,000/- towards conventional damages along with the amount of compensation towards loss of income now arrived at, i.e., Rs.6,40,000/-, it comes to Rs.7,20,000/-.

8. It is reported that the claimants have already withdrawn 50% of the entire award amount already lying in deposit, which approximately works out to Rs.7,50,000/- inclusive of interest accrued thereon. As this Court has come to the conclusion that the claimants are entitled to a total compensation of Rs.7,20,000/-, the amount already withdrawn by the claimants, viz., Rs.7,50,000/- approximately, would meet the ends of justice.

9. Hence, with the above modification in the compensation awarded by the Tribunal, the appeal is partly allowed to the extent indicated above.

sra

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Motor Accidents Claims Tribunal
(Additional District Court cum
Fast Track Court), Dharmapuri.

2. The Record Keeper,VR Section, High Court, Madras.

+ 1 cc to Mr. P. Jagadeeswaran, Advocate, SR No.37314
+ 1 cc to Mr. V.R. Anna Gandhi, Advocate, SR No.37318

PV(CO)
SR/12.1.2007

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